

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO				CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) 3000003270	
TO: CITY COUNCIL		FROM (ORIGINATING DEPARTMENT): ECP/Transportation Eng Ops Div		DATE: 12/21/2009	
SUBJECT: COOPERATIVE AGREEMENT WITH CALTRANS FOR PALM AVENUE/I-805 INTERCHANGE					
PRIMARY CONTACT (NAME, PHONE): Deborah Van Wanseele, 619-533-3012, MS 608			SECONDARY CONTACT (NAME, PHONE): Siavash Pazargadi, 619-533-3757, MS 608		
COMPLETE FOR ACCOUNTING PURPOSES					
FUND	400092	400093			
DEPT / FUNCTIONAL AREA	OTHR-0000000-TR	OTHR-0000000-TR			
ORG / COST CENTER	2113120013	2113120013			
OBJECT / GENERAL LEDGER ACCT	512059	512059			
JOB / WBS OR INTERNAL ORDER	S-00869.01.01	S-00869.01.01			
C.I.P./CAPITAL PROJECT No.	S-00869	S-00869			
AMOUNT	\$18,600.00	\$11,400.00	0.00	0.00	0.00
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
COST SUMMARY (IF APPLICABLE): The total of this request is \$30,000.					
ROUTING AND APPROVALS					
CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	
Equal Opportunity Contracting	Comptroller	ORIG DEPT.	Oskoui, Afshin	2/1/2010	
Environmental Analysis	Facilities Financing	CFO			
Financial Management	Facilities Financing	DEPUTY CHIEF	Jarrell, David	7/6/2010	
Facilities Financing	Facilities Financing	COO			
Facilities Financing		CITY ATTORNEY	Kohut, Ryan	10/5/2010	
		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:	<input checked="" type="checkbox"/> RESOLUTIONS	<input type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)	
I. Authorizing the Mayor, or his designee, to execute a Cooperative Agreement with Caltrans for the preparation of a Project Report and Environmental Document for the Palm Avenue/I-805 Interchange project ; and					

2. Authorizing the expenditure of \$30,000 from CIP S-00869, Palm Ave I-805 inter of which \$18,600 is from Fund 400092, Otay Mesa FBA East, and \$11,400 is from Fund 400093, Otay Mesa FBA West, for the purpose of funding the cooperative agreement; and	
3. Authorizing the Chief Financial Officer to return excess budgeted funds, if any, to the appropriate reserves.	
STAFF RECOMMENDATIONS: Approve the resolution to authorize the Mayor to execution the Cooperative Agreement with Caltrans for the preparation of a Project Report and Environmental Document for the Palm Avenue/Interstate 805 interchange.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	HUESO (8)
COMMUNITY AREA(S):	Otay Mesa, Otay Mesa-Nestor
ENVIRONMENTAL IMPACT:	This activity is exempt from CEQA pursuant to State CEQA Guidelines Section 15262, Feasibility and Planning Studies. Any construction activities related to this approval will be subject to environmental review.
CITY CLERK INSTRUCTIONS:	

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 12/21/2009

ORIGINATING DEPARTMENT: ECP/Transportation Eng Ops Div

SUBJECT: COOPERATIVE AGREEMENT WITH CALTRANS FOR PALM AVENUE/I-805 INTERCHANGE

COUNCIL DISTRICT(S): HUESO (8)

CONTACT/PHONE NUMBER: Deborah Van Wanseele/619-533-3012, MS 608

**REQUESTED ACTION:**

Authorize the execution of the Cooperative Agreement with Caltrans.

**STAFF RECOMMENDATION:**

Approve the resolution to authorize the Mayor to execution the Cooperative Agreement with Caltrans for the preparation of a Project Report and Environmental Document for the Palm Avenue/Interstate 805 interchange.

Planned residential and commercial developments in the Otay Mesa Community will substantially increase traffic volumes on Palm Avenue east of Interstate 805, and on the freeway ramps. Caltrans technical studies determined that the existing Palm Avenue overpass at I-805 was insufficient to adequately handle the demand and that the City of San Diego would need to improve the bridge to accommodate the area's ultimate needs.

Caltrans is in the process of developing a Corridor Improvement project for I-805. To better coordinate the needs of the two projects, the City and Caltrans have determined that the City will manage the design components of the overcrossing widening and ramp improvements at the Palm Avenue/I-805 interchange and Caltrans will provide project oversight and construction administration.

The Cooperative Agreement that is the subject of this action will provide funding for Caltrans oversight of the preparation of the Project Study Report and Environmental Documentation for the project.

Separate Cooperative Agreements for construction contracting for the project will be brought to Council for approval at a later date.

**FISCAL CONSIDERATIONS:**

\$30,000 required for the Cooperative Agreement with Caltrans is available in the Palm Avenue/I-805 Interchange project (CIP S-00869)

**EQUAL OPPORTUNITY CONTRACTING:**

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**PREVIOUS COUNCIL COMMITTEE ACTION:**

On June 27, 1994 (Resolution No. 284152), the City Council approved an agreement with Caltrans for the design and construction of Phase 1 of the project, consisting of widening Palm Avenue east of I-805, off-ramp widening, and installation of signals at the ramps.

On November 20, 2007 (Resolution No. 303158) the City Council approved an agreement with Simon Wong Engineering, Inc. for Professional Services related to the Palm Avenue overcrossing widening.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

The following list of community groups will be contacted and coordinated with throughout the design phase of the project: Otay Mesa Planning Committee, Otay Mesa Chamber of Commerce, South County Economic Development Council, Otay Mesa Recreation Council and the Otay Mesa-Nestor Community Planning Committee.

**KEY STAKEHOLDERS:**

City of San Diego, CALTRANS, Otay Mesa residents, Otay Mesa Chamber of Commerce, South County Economic Development Council, Otay Mesa Recreation Council, and Otay Mesa-Nestor Community Planning Committee.

Oskoui, Afshin

Originating Department

Jarrell, David

Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
DIEGO AUTHORIZING THE EXECUTION OF A  
COOPERATIVE AGREEMENT WITH CALTRANS FOR THE  
PALM AVENUE/I-805 INTERCHANGE PROJECT.

WHEREAS, planned residential and commercial developments in the Otay Mesa  
Community will substantially increase traffic volumes on Palm Avenue east of Interstate  
805; and

WHEREAS, Caltrans technical studies have determined that the existing Palm  
Avenue overpass at Interstate 805 was insufficient to adequately handle the demand; and

WHEREAS, Caltrans is in the process of developing a Corridor Improvement  
Project for Interstate 805; NOW THEREFORE,

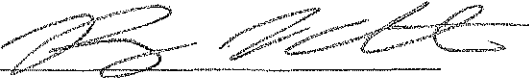
BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is hereby authorized and empowered to  
execute, for and on behalf of said City, an agreement with CALTRANS, for the  
preparation of a project report and environmental document for the Palm Avenue/I-805  
Interchange Project [Project] under the terms and conditions set forth in the Agreement  
on file in the office of the City Clerk as Document No. RR \_\_\_\_\_.

2. That the expenditure of an amount not to exceed \$30,000 from CIP S-  
00869, Palm Avenue/I-805 interchange of which \$18,600 is from Fund 400092, Otay  
Mesa Financial Benefit Assessment [FBA] East, and \$11,400 is from Fund 400093, Otay  
Mesa FBA West, is authorized for the purpose of providing funds for the above  
referenced Project.

3. That the Chief Financial Officer, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Ryan P. Kohut  
Deputy City Attorney

RPK:cfq  
07/13/10  
Or.Dept:E&CP  
R-2011-66  
2010-00637

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:  
February 24, 2010

SUBJECT: Cooperative Agreement with Caltrans for Palm Avenue/I-805 Interchange

**GENERAL CONTRACT INFORMATION**

Recommended Contractor: Caltrans  
Amount of this Action: \$30,000.00  
Funding Source: City of San Diego

**SUBCONSULTANT PARTICIPATION**

There is no subconsultant activity associated with this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity Required:

Caltrans is a Government Agency, and as such, is exempt from submitting Work Force Reports. Refer to San Diego Municipal Code Section 22.2703 (b).

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

This action is to authorize the Mayor or his representative to enter into an agreement with Caltrans for Palm Avenue/I-805 Interchange.

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## **COOPERATIVE AGREEMENT**

This agreement, effective on \_\_\_\_\_, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of San Diego, a body politic and municipal corporation or chartered city of the State of California, referred to as CITY.

## **RECITALS**

1. CALTRANS and CITY, collectively referred to as PARTNERS, are authorized to enter into a cooperative agreement for improvements within the SHS right of way per Streets and Highways Code sections 114 and/or 130.
2. WORK completed under this agreement contributes toward interchange improvements on Palm Avenue at Interstate 805 (I-805), referred to as PROJECT.
3. PARTNERS will cooperate to complete PID and PA&ED.
4. There are no prior PROJECT-related cooperative agreements.
5. No PROJECT deliverables have been completed prior to this agreement.
6. The estimated date for COMPLETION OF WORK is August 1, 2013.
7. PARTNERS now define in this agreement the terms and conditions under which they will accomplish WORK.

## **DEFINITIONS**

**CALTRANS STANDARDS** – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

**CEQA** – The California Environmental Quality Act (California Public Resources Code, sections 21000 et seq.) that requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.



**COMPLETION OF WORK** – All PARTNERS have met all scope, cost, and schedule commitments included in this agreement and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

**COOPERATIVE AGREEMENT CLOSURE STATEMENT** – A document signed by PARTNERS that verifies the completion of all scope, cost, and schedule commitments included in this agreement.

**FHWA** – Federal Highway Administration.

**FHWA STANDARDS** – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at <http://www.fhwa.dot.gov/programs.html>.

**FUNDING PARTNER** – A partner who commits a defined dollar amount to WORK.

**FUNDING SUMMARY** - The table in which PARTNERS designate funding sources, types of funds, and the project components in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

**HM-1** – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

**HM-2** – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

**HM MANAGEMENT ACTIVITIES** – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

**IMPLEMENTING AGENCY** – The partner responsible for managing the scope, cost, and schedule of a project component to ensure the completion of that component.

**IQA** – Independent Quality Assurance – Ensuring that IMPLEMENTING AGENCY’S quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan. IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

**NEPA** – The National Environmental Policy Act of 1969 that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

**PA&ED (Project Approval and Environmental Document)** – The project component that includes the activities required to deliver the project approval and environmental documentation for PROJECT.

**PARTNERS** – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner's individual actions legally bind the other partners.

**PROJECT MANAGEMENT PLAN** – A group of documents used to guide a project's execution and control throughout the project's lifecycle.

**SAFETEA-LU** – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, signed into federal law on August 10, 2005.

**SCOPE SUMMARY** – The table in which PARTNERS designate their commitment to specific scope activities within each project component as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

**SHS** – State Highway System.

**SPONSOR(S)** – The partner that accepts the obligation to secure financial resources to fully fund WORK. This includes any additional funds beyond those committed in this agreement necessary to complete the full scope of WORK defined in this agreement or settle claims.

**WORK** – All scope and cost commitments included in this agreement.

### **RESPONSIBILITIES**

8. CITY is SPONSOR for all WORK.
9. CITY is the only FUNDING PARTNER for this agreement. CITY's funding commitment is defined in the FUNDING SUMMARY.
10. CALTRANS is the CEQA lead agency for PROJECT.
11. CALTRANS is the NEPA lead agency for PROJECT.
12. CITY is IMPLEMENTING AGENCY for PA&ED.

### **SCOPE**

#### **Scope: General**

13. All WORK will be performed in accordance with federal and California laws, regulations, and standards.

All WORK will be performed in accordance with FHWA STANDARDS and CALTRANS STANDARDS.

14. IMPLEMENTING AGENCY for a project component will provide a Quality Management Plan for that component as part of the PROJECT MANAGEMENT PLAN.
15. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
16. CITY may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
17. PARTNERS may, at their own expense, have a representative observe any scope, cost, or schedule commitments performed by another partner. Observation does not constitute authority over those commitments.
18. Each partner will ensure that all of their personnel participating in WORK are appropriately qualified to perform the tasks assigned to them.
19. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in WORK.
20. PARTNERS will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations if PROJECT work is done under contract (not completed by a partner's own employees) and is governed by the Labor Code's definition of a "public work" (section 1720(a)(1)).

PARTNERS will include wage requirements in all contracts for "public work" and will require their contractors and consultants to include prevailing wage requirements in all agreement-funded subcontracts for "public work".

21. IMPLEMENTING AGENCY for each project component included in this agreement will be available to help resolve WORK-related problems generated by that component for the entire duration of PROJECT.
22. CALTRANS will issue, upon proper application, at no cost, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

23. If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during WORK, all work in that area will stop until a qualified professional can

evaluate the nature and significance of the discovery and a plan is approved for its removal or protection. City will notify CALTRANS within twenty-four (24) hours of any discovery.

24. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.  
  
PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete WORK without the written consent of the partner authorized to release them, unless required or authorized to do so by law.
25. If any partner receives a public records request, pertaining to WORK under this agreement, that partner will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any transferred public documents.
26. If HM-1 or HM-2 is found during WORK, IMPLEMENTING AGENCY for the project component during which it is found will immediately notify PARTNERS.
27. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. CALTRANS will undertake HM-1 MANAGEMENT ACTIVITIES with minimum impact to PROJECT schedule.
28. CITY, independent of PROJECT, is responsible for any HM-1 found within the Project limits outside existing SHS right of way. CITY will undertake or cause to be undertaken HM-1 MANAGEMENT ACTIVITIES with minimum impacts to PROJECT schedule.
29. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 MANAGEMENT ACTIVITIES.
30. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
31. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each partner's responsibilities in this agreement.
32. IMPLEMENTING AGENCY for each project component will furnish PARTNERS with written quarterly progress reports during the implementation of WORK in that component.

33. Upon COMPLETION OF WORK, ownership and title to all materials and equipment constructed or installed as part of WORK within SHS right of way become the property of CALTRANS.
34. IMPLEMENTING AGENCY for a project component will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.
35. PARTNERS will confer on any claim that may affect WORK or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No partner shall prejudice the rights of another partner until after PARTNERS confer on claim.
36. PARTNERS will maintain and make available to each other all WORK-related documents, including financial data, during the term of this agreement and retain those records for four (4) years from the date of termination or COMPLETION OF WORK, or three (3) years from the date of final federal voucher, whichever is later.
37. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State auditor, FHWA, and CITY will have access to all WORK-related records of each partner for audit, examination, excerpt, or transaction.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation.

The audited partner will review the preliminary audit, findings, and recommendations, and provide written comments within 60 calendar days of receipt.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

38. PARTNERS consent to service of process by mailing copies by registered or certified mail, postage prepaid. Such service becomes effective 30 calendar days after mailing. However, nothing in this agreement affects PARTNERS' rights to serve process in any other matter permitted by law.
39. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, SPONSOR(S) will seek out additional funds and PARTNERS will amend this agreement.

40. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.
41. If WORK stops for any reason, PARTNERS are still obligated to implement all applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each partner's responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
42. Each partner accepts responsibility to complete the activities that they selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.

**Scope: Project Approval and Environmental Document (PA&ED)**

43. CALTRANS is the CEQA lead agency. CALTRANS will determine the type of environmental documentation required and will cause that documentation to be prepared.
44. All partners involved in the preparation of CEQA environmental documentation will follow the CALTRANS STANDARDS that apply to the CEQA process including, but not limited to, the guidance provided in the Standard Environmental Reference available at [www.dot.ca.gov/ser](http://www.dot.ca.gov/ser).
45. Pursuant to SAFETEA-LU Section 6004 and/or 6005, CALTRANS is the NEPA lead agency for PROJECT and will assume responsibility for NEPA compliance and will prepare any needed NEPA environmental documentation or will cause that documentation to be prepared.
46. All partners involved in the preparation of NEPA environmental documentation will follow FHWA STANDARDS that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook available at [www.fhwa.dot.gov/hep/index.htm](http://www.fhwa.dot.gov/hep/index.htm).
47. CITY will prepare the appropriate environmental documentation to meet CEQA requirements.
48. CITY will prepare the appropriate NEPA environmental documentation to meet NEPA requirements.
49. Any partner preparing any portion of the CEQA environmental documentation, including any studies and reports, will submit that portion of the documentation to the CEQA lead agency for review, comment, and approval at appropriate stages of development prior to public availability.
50. Any partner preparing any portion of the NEPA environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials,

determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.

51. CITY will prepare, publicize and circulate all CEQA-related public notices and will submit said notices to the CEQA lead agency for review, comment, and approval prior to publication and circulation.
52. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.

CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.

53. The CEQA lead agency will attend all CEQA-related public meetings.
54. CITY will plan, schedule, prepare materials for, and host all CEQA-related public meetings and will submit all materials to the CEQA lead agency for review, comment, and approval at least 10 working days prior to the public meeting date.
55. The NEPA lead agency will attend all NEPA-related public meetings.
56. CITY will plan, schedule, prepare materials for, and host all NEPA-related public meetings. CITY will submit all materials to CALTRANS for CALTRANS' review, comment, and approval at least 10 working days prior to the public meeting date.
57. If a partner who is not the CEQA or NEPA lead agency holds a public meeting about PROJECT, that partner must clearly state their role in PROJECT and the identity of the CEQA and NEPA lead agencies on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA or NEPA public review process.

That partner will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the appropriate lead agency for review, comment, and approval at least 10 working days prior to publication or use. If that partner makes any changes to the materials, that partner will allow the appropriate lead agency to review, comment on, and approve those changes three (3) working days prior to the public meeting date.

The CEQA lead agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities. The NEPA lead agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

58. The partner preparing the environmental documentation, including the studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues

and perform any necessary work to ensure that PROJECT remains in environmental compliance.

59. CITY will coordinate and obtain the following resource agency permits, agreements, and/or approvals: U.S. Fish and Wildlife Service Approval.

### **COST**

#### **Cost: General**

60. SPONSOR(S) will secure funds for all WORK including any additional funds beyond the FUNDING PARTNERS' existing commitments in this agreement. Any change to the funding commitments outlined in this agreement requires an amendment to this agreement.
61. The cost of any awards, judgments, or settlements generated by WORK is a WORK cost.
62. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within existing SHS right of way.
63. CITY, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to any HM-1 found within PROJECT limits and outside of existing SHS right of way.
64. HM MANAGEMENT ACTIVITIES costs related to HM-2 are a PROJECT CONSTRUCTION cost.
65. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is a WORK cost.
66. The cost to comply with and implement the commitments set forth in the environmental documentation is a WORK cost.
67. The cost to ensure that PROJECT remains in environmental compliance is a WORK cost.
68. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is a WORK cost.
69. Independent of WORK costs, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.
70. Independent of WORK costs, CITY will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.



71. Fines, interest, or penalties levied against any partner will be paid, independent of WORK costs, by the partner whose actions or lack of action caused the levy. That partner will indemnify and defend all other partners.
72. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is a WORK cost.
73. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

74. If there are insufficient funds in this agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, the partner implementing the commitments or conditions accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

That partner may request reimbursement for these costs during the amendment process.

75. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.
76. FUNDING PARTNERS accept responsibility to provide the funds identified on the FUNDING SUMMARY.
77. SPONSOR(S) accepts responsibility to ensure full funding for the identified scope of work.

**Cost: Project Approval and Environmental Document (PA&ED)**

78. The costs to prepare, publicize, and circulate all CEQA and NEPA-related public notices is a WORK cost.
79. The cost to plan, schedule, prepare, materials for, and host all CEQA and NEPA-related public hearings is a WORK cost.
80. FUNDING PARTNERS will share the cost of PA&ED as shown on the FUNDING SUMMARY.
81. The following partners will submit invoices for PA&ED:
  - CALTRANS will invoice CITY

82. PARTNERS will exchange funds for actual costs. CALTRANS will submit to CITY one invoice for \$30,000 upon execution of this agreement. This represents estimated cost of reimbursable work by CALTRANS.

After PARTNERS agree that all Scope activities are complete, CALTRANS will submit a final accounting for all WORK costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the obligation of this agreement.

### **SCHEDULE**

83. PARTNERS will manage the schedule for WORK through the work plan included in the PROJECT MANAGEMENT PLAN.

### **GENERAL CONDITIONS**

84. This agreement will be understood in accordance with and governed by the Constitution and laws of the State of California. This agreement will be enforceable in the State of California. Any legal action arising from this agreement will be filed and maintained in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides.
85. All obligations of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
86. Any PARTNER who performs IQA does so for its own benefit, further, that PARTNER cannot be assigned liability due to its IQA activities.
87. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that CALTRANS will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS under this agreement.

88. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY under this agreement.

It is understood and agreed that CITY will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this agreement.

89. This agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. This agreement is not intended to affect the legal liability of PARTNERS by imposing any standard of care for completing WORK different from the standards imposed by law.
90. PARTNERS will not assign or attempt to assign agreement obligations to parties not signatory to this agreement.
91. Any ambiguity contained in this agreement will not be interpreted against PARTNERS. PARTNERS waive the provisions of California Civil Code section 1654.
92. A waiver of a partner's performance under this agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this agreement does not constitute an amendment to or negate all other articles or sections of this agreement.
93. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
94. If any partner defaults in their agreement obligations, the non-defaulting partner(s) will request in writing that the default be remedied within 30 calendar days. If the defaulting partner fails to do so, the non-defaulting partner(s) may initiate dispute resolution.
95. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CITY will attempt to negotiate a resolution. If no resolution is reached, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of WORK in accordance with the terms of this agreement. However, if any partner stops WORK, the other partner(s) may seek equitable relief to ensure that WORK continues.

Except for equitable relief, no partner may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

Any civil complaints will be filed in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides. The prevailing partner will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

96. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
97. If any provisions in this agreement are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this agreement.
98. This agreement is intended to be PARTNERS' final expression and supersedes all prior oral understanding or writings pertaining to WORK.
99. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this agreement to include completion of those additional tasks.
100. PARTNERS will execute a formal written amendment if there are any changes to the commitments made in this agreement.
101. This agreement will terminate upon COMPLETION OF WORK or upon 30 calendar days' written notification to terminate and acceptance between PARTNERS, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

102. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.
103. Signatories may execute this agreement through individual signature pages provided that each signature is an original. This agreement is not fully executed until all original signatures are attached.

### **CONTACT INFORMATION**

The information provided below indicates the primary contact data for each partner to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. These changes do not require an amendment to this agreement.

The primary agreement contact person for CALTRANS is:

Harwell Ontoy, Project Manager  
4050 Taylor Street  
San Diego, California 92110  
Office Phone: (619) 688-3156  
Fax Number: (619) 688-2587  
Email: harwell.ontoy@dot.ca.gov

The primary agreement contact person for CITY is:

Edric Doringo, Project Manager  
Engineering & Capital Projects  
600 B Street, Suite 800  
San Diego, California 92101  
Office Phone: (619) 533-4655  
Fax Number: (619) 533-5176  
Email: edoringo@sandiego.gov

**SIGNATURES**

PARTNERS declare that:

1. Each partner is an authorized legal entity under California state law.
2. Each partner has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA

CITY OF SAN DIEGO

DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
LAURIE BERMAN  
District Director

By: \_\_\_\_\_  
JERRY SANDERS or Designee  
Mayor

CERTIFIED AS TO FUNDS:

Attest: \_\_\_\_\_  
Elizabeth Maland  
City Clerk

By: \_\_\_\_\_  
Marlene Davis  
District Budget Manager/UP \_\_\_\_\_

APPROVED AS TO FORM AND PROCEDURE

By: \_\_\_\_\_  
Jan Goldsmith  
City Attorney

## SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	CITY	N/A
2					<b>Project Approval and Environmental Document (PA&amp;ED) - 160, 165, 175, 180, 205</b>	X	X	
	160				Perform Preliminary Engineering Studies and Draft Project Report	X	X	
		05			Updated Project information		X	
		10			Engineering Studies		X	
		15			Draft Project Report		X	
		20			Engineering and Land Net Surveys	X		
		30			Environmental Study Request (ESR)		X	
		40			NEPA Delegation	X		
		45			Base Maps and Plan Sheets for Project Report and Environmental Studies		X	
	165				Perform Environmental Studies and Prepare Draft Environmental Document	X	X	
		05			Environmental Scoping of Alternatives Identified for Studies in Project Initiation Document		X	
		10			General Environmental Studies		X	
		15			Biological Studies		X	
		20			Cultural Resource Studies		X	
		25			Draft Environmental Document or Categorical Exemption/Exclusion	X	X	
		10			Section 4(F) Evaluation		X	
		20			Environmental Quality Control and Other Reviews	X		
		25			Approval to Circulate Resolution	X		
		30			Environmental Coordination		X	
		99			Other Draft Environmental Document Products		X	
		30			NEPA Delegation	X		
		45			Required Permits During PA&ED Development		X	
		50			Permits During PA&ED Development	X	X	X
		05			U.S. Army Corps of Engineers Permit (404)			X
		10			U.S. Forest Service Permit(s)			X
		15			U.S. Coast Guard Permit			X
		20			Department of Fish and Game 1600 Agreement(s)			X
		25			Coastal Zone Development Permit			X
		30			Local Agency Concurrence/Permit			X
		35			Waste Discharge (NPDES) Permit			X
		40			U.S. Fish and Wildlife Service Approval	X		
		45			Regional Water Quality Control Board 401 Permit			X
		50			Updated Environmental Commitments Record		X	
		55			NEPA Delegation	X		
		95			Other Permits			X
	175				Circulate Draft Environmental Document and Select Preferred Project Alternative Identification		X	

180				Prepare and Approve Project Report and Final Environmental Document	X	X	
		05		Final Project Report		X	
		10		Final Environmental Document	X	X	
			05	Approved Final Environmental Document	X		
			05	Draft Final Environmental Document Review	X		
			10	Revised Draft Final Environmental Document	X		
			15	Section 4(F) Evaluation	X		
			20	Findings	X		
			25	Statement of Overriding Considerations	X		
			30	CEQA Certification	X		
			40	Section 106 Consultation and MOA	X		
			45	Section 7 Consultation	X		
			50	Final Section 4(F) Statement	X		
			55	Floodplain Only Practicable Alternative Finding	X		
			60	Wetlands Only Practicable Alternative Finding	X		
			65	Section 404 Compliance	X		
			70	Mitigation Measures	X		
		10		Public Distribution of Final Environmental Document and Respond To Comments		X	
		15		Final Right of Way Relocation Impact Document		X	
		99		Other Final Environmental Document Products		X	
		15		Completed Environmental Document	X	X	
		05		Record of Decision (NEPA)	X		
		10		Notice of Determination (CEQA)	X		
		20		Environmental Commitments Record		X	
		99		Other Completed Environmental Document Products		X	
		20		NEPA Delegation	X		
205				Obtain Permits, Agreements, and Route Adoptions		X	



FUNDING SUMMARY

Funding Source	Funding Partner	Fund Type	PA&ED	Subtotal Support	Subtotal Capital	Subtotal Funds Type
LOCAL	CITY	Local	\$30,000.00	\$30,000.00	\$0.00	\$30,000.00
		Subtotals by Component	\$30,000.00	\$30,000.00	\$0.00	\$30,000.00

The City of San Diego  
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

CC 3000003270  
ORIGINATING BUSINESS AREA: 2113

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ By: Rob Ruscitto  
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
									\$0.00
TOTAL AMOUNT									\$0.00

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$30,000.00

Vendor: Caltrans

Purpose: Authorize expenditure of funds for the Cooperative Agreement for the preparation of a Project Report and Environmental Document of the Palm Avenue/Interstat 805 interchange. CIP S-00869

Date: May 6, 2010 By: Rob Ruscitto *RR*  
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
01	400092	S00869		OTHR-00000000-TR	512059	2113		S-00869.01.01	\$18,600.00
02	400093	S00869		OTHR-00000000-TR	512059	2113		S-00869.01.01	\$11,400.00
TOTAL AMOUNT									\$30,000.00